IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION
CRIMINAL APPEAL NO.808 OF 1990

The State of Maharashtra .. Appellant
(Orig. Complt.)

Versus

1. Kiran Krishna Bhusane,
2. Mahamood Jainuddin Surve,
3. Ratnakar Dattatraya Patil,
4. Hemant Ramchandra Patil,
5. Kishore Jagannath Churi,
6. Mahendrakumar Waman Pandit ..Respondents

(Orig.Accd.Nos. 1 to 6)

Dr. F.R. Shaikh APP for the State
Mr. B.M. Purandare for Respondent Nos.4 to 6.

CORAM : D.G. DESHPANDE,
& S.R. SATHE,JJ.
DATED : 12th March,2007

ORAL JUDGEMENT :- (PER S.R.SATHE,J.)

1. The State of Maharastra has preferred this appeal against the judgement and order passed by the Court of 8th Assistant Sessions Judge, Thane in Sessions Case No.373 of 1987 whereby the accused Nos. 1 to 6 were acquitted of the offences punishable under sections 147, 148, 307 r/w. 149 and 307 r/w.34 of IPC.

2. The brief facts giving rise to this appeal are

as under :-

The accused Nos. 1 and 2 are the residents of Boisar while the accused Nos. 3,4 are the residents of village Kudan, Taluka Palghar and accused Nos. 5 and 6 are the residents of village Nandgaon. Complainant Ashok Sankhe was working as operator in the Trans-India Company at Boisar. However, subsequently he started his own business i.e. cycle shop and motor garage at village Kudan. There was some dispute between complainant and the accused No.3 Ratnakar Patil.

3. On 23/12/1985, at about 5.00 pm, complainant Ashok Sankhe and his friend Suresh Sahani (PW-5) were standing near Railway Station. At that time, he found that accused No.3 Ratnakar Patil was standing with some of his friends at some distance and he was pointing out finger towards Ashok Sankhe and telling something to his friends. As a result of the same, complainant Ashok Sankhe apprehended that Ratnakar Patil may assault him. With a view to have some protection, complainant went to Boisar Railway Station. He went to platform No.1. Chandrakant Jadhav, friend of complainant met him at the said place. Complainant, therefore, narrated the incident and told Chandrakant Jadhav about his apprehension. Chandrakant Jadhav, therefore, went

alongwith Ashok Sankhe to the place where Ratnakar Patil was standing. At that time, they noticed that one rickshaw was standing at some distance from Ratnakar Patil. After they reached the said place, the said rickshaw started. Ratnakar Patil asked them to wait however the rickshaw did not halt and went ahead. Within few minutes, the said rickshaw again returned back and out of the said rickshaw the accused No.4 Hemant Patil got down and gave a blow with stick on the head of Chandrakant from his back side and the remaining accused also started assaulting Chandrakant. When complainant tried to rescue Chandrakant, he was also beaten. Hence complainant and Suresh Sahani ran away from the said place. The complainant went to platform of Boisar Railway Station. Finding that accused Nos. 3 and 4 were chasing him, he went to the booking office of the Railway Station. Hearing the hue and cry, Police Constable Laxman Dhumal went towards the place of offence. He found that Chandrakant was lying on the ground. He, therefore, took him to the Government Hospital. As Doctor was not available, he was removed to the hospital of Dr. Pramod Patil. Chandrakant was given some medical treatment at the said hospital. However as per the advice of Dr. Promod Patil, he was then removed to J.J. Hospital, Bombay.

4. In the meantime, complainant Ashok Sankhe also came to know about the admission of Chandrakant to J.J. Hospital. Police Inspector Ahire when received the information about the incident, he also reached to the hospital. He recorded the complaint of Ashok Sankhe. The same was registered as C.R. No.I-258/1985 at Boisar Police Station. On the basis of the said complaint, Police registered the crime for the offence punishable under sections 147, 148, 307 r/w. 149.

5. On the next day, Police drew the panchanama of the place of offence and recorded the statements of some witnesses. Police also attached clothes of the injured under the panchanama. As injured Chandrakant was not in a position to give any statement, Police did not record his statement. Police sent the blood stained clothes of the injured to C.A. After coming to know that injured Chandrakant has been discharged, Police recorded his statement on 10/01/1986. After completion of the investigation, Police submitted charge-sheet against the accused in the Court of JMFC, Palghar.

6. Finding that the accused were charge-sheeted for the offences punishable under section 307 the of

IPC which was exclusively triable by the Court of Sessions, the learned JMFC committed the case to the Court of Sessions, Thane. The learned Assistant Sessions Judge framed Charge Exh-5 against the accused for the offence mentioned above. The charge was read over and explained to the accused. All the accused pleaded not guilty and claimed to be tried. From the suggestions put to the prosecution witnesses and from the statement of the accused recorded as per section 313 of Cr.P.C., it appears that the defence of the accused was of total denial. According to them, they were falsely implicated as a result of the enmity.

7. In order to prove the prosecution case, prosecution examined as many as 8 witnesses consisting of complainant PW-1 Ashok Sankhe Exh-17, PW-2 Sambhaji Deshmukh Exh-19, PW-3 injured Chandrakant Jadhav Exh-21, PW-4 Police Constable Laxman Dhumal who took the injured to the hospital, PW-5 alleged eye witness Suresh Sahani Exh-27, PW-6 witness Ashok Gharat Exh-28, PW-7 Dr. Pramod Patil Exh-31 and the Investigating Officer PW-8 Uttam Ahire Exh-33. Prosecution also produced the FIR Exh-18, panchanama of place of offence Exh-20, panchanama of clothes of the injured Exh-23, Medical certificate of injured Chandrakant Jadhav Exh-

32 and C.A. Report Exh-37.

8. After considering the evidence adduced by the prosecution and hearing arguments of both the learned advocates, the learned Trial Judge came to the conclusion that the prosecution has failed to prove that at the relevant time, there was an unlawful assembly and the common object of which was to make an attempt to commit murder of Ashok Sankhe and/or Chandrakant Jadhav and that the accused persons were the members of the said unlawful assembly. Naturally, the learned Trial Judge acquitted all the accused persons of the charges under sections 147, 148, 307 r/w. 149 and 307 r/w. 34 of IPC. The learned Trial Judge however held that the prosecution has proved that at the relevant time the accused No.4 Hemant Patil assaulted Chandrakant. He, therefore, convicted accused No.4 Hemant Patil for the offence punishable under section 323 and sentenced him to suffer R.I. for 3 months and to pay a fine of Rs. 200/- in default to suffer R.I. for one month.

9. Being aggrieved by the above mentioned order of acquittal against the accused, the State of Maharashtra has filed this appeal against the acquittal. There is

no appeal against conviction filed by accused No.4 before us, hence, we are restricting ourselves to the present appeal against acquittal. At the time of hearing of the appeal, none appeared on behalf of the accused Nos.1,2 and 3. The learned APP took us through the entire evidence on record as well as the judgement of the trial Judge. The learned APP has urged only two points before us. Firstly, he submitted that the learned Trial Judge has not properly appreciated the evidence on record and he ought to have given importance to the evidence of injured Chandrakant Jadhav as he had specifically stated that the accused persons assaulted him. Secondly, he canvassed before us that witness Chandrakant Jadhav has stated that he was in hospital for a period of about 21 days and his right side has been affected as a result of the assault in question. The learned APP, therefore, submitted that the appeal be allowed and the accused be convicted for the offences punishable under sections 147, 148, 307 r/w. 149 of IPC.

10. As against this, Shri B.M. Purandare, learned Advocate for the accused Nos.4,5 and 6 submitted that the learned Trial Judge has rightly appreciated the evidence so far as alleged offence under section 307 r/w. 149 of IPC is concerned. He submitted that there

was inordinate delay in recording the statement of Chandrakant. Besides, there were several contradictions and discrepancies in the evidence of the complainant, alleged eye witness Sahani and the injured Chndrakant. He, therefore, submitted that the learned Trial Judge has in fact wrongly convicted the accused No.4 for the offence punishable under section 323 of IPC. He therefore submitted that appeal be dismissed.

11. The complainant Ashok Sankhe Exh-17 has stated that on the date of incident in the evening when he was near Railway Station, accused No.3 Ratnakar Patil was standing at some distance and he was pointing out his finger towards him and telling something to his friends. He, therefore, apprehended that Ratnakar Patil and his friends would assault him and as such he went to Boisar Railway Station. He has also stated that he met Chandrakant Jadhav at the said place and then Chandrakant Jadhav and he returned to the place of offence. At that time, Ratnakar Patil i.e. accused No.3 was there but others were not there. But one rickshaw was standing at some distance. This statement of complainant Ashok Sankhe is fully corroborated by the Prosecution witness No.5 Suresh Sahani Exh-27 and injured Chandrakant Jadhav Exh-21. Thus, from their

evidence it does appear that at the relevant time these 3 witnesses were present at the place of offence.

12. It is an admitted fact that at about 7.00 pm or so, when Police constable Laxman Dhumal who was on the Railway Station duty heard some hue and cry near from the Station and therefore, he went at the said place and he found that Chandrakant Jadhav was lying at the said place in injured condition. He had sustained bleeding injury to his head and was unconscious. Police Constable therefore took injured Chandrakant to Government dispensary. However, as Doctor was not available at the said place, he immediately took the injured to private hospital of Dr. Pramod Patil. Chandrakant Jadhav was treated at the said place but Dr. Pramod Patil found that the injury sustained by Chandrakant Jadhav was serious. He, therefore, advised police to take Chandrakant to J.J. Hospital. Accordingly, the injured Chandrakant was removed to J.J. Hospital on the same day.

13. The prosecution has not produced any medical certificate issued by J.J. Hospital. Nor they have examined any Doctor from the said Hospital. However, the prosecution has examined Dr. Pramod Patil at Exh-31

and he has produced the medical certificate issued by him at Exh-32. Dr. Pramod Patil has stated that when he examined Chandrakant Jadhav, he found following injury on his person :-

> *" Injury on head vertex central place extending from parietal region to frontal region. Dimension 2 ½" long scalp deep, margin of injury was irregular, it was bleeding minimum. Around that cut injury there was swelling of 3" x 1". That swelling was red."*

Thus, from the material on record, one thing is certain that on 23/12/1985 at about 7.00 pm, Chandrakant Jadhav sustained injury to his head as mentioned above. The main and the material question is whether the said injury was caused at the hands of the accused persons or by any one of them ? It is the prosecution case at the relevant time, the accused Nos. 1 to 6 had formed an unlawful assembly, the common object of which was to make an attempt to commit murder of complainant Ashok Sankhe and/or Chandrakant Jadhav. Naturally, the prosecution must first prove that at the relevant time there were 5 or more persons. In order to prove this, prosecution is mainly relying on the

evidence of 3 eye witnesses namely complainant Ashok Sankhe Exh-47, injured Chandrakant Jadhav Exh-21 and alleged eye witness Suresh Sahani Exh-27.

14. From the careful reading of the complainant's evidence, it is very clear that he has nowhere even specifically stated that at the relevant time the accused before the Court were present at the place of offence. He has admitted that he filed complaint Exh-18. But it is crystal clear that even at that time, he was not knowing even the names of all the accused persons. Not only that but he has failed to specifically mention that accused before the Court are the same persons who had actually taken part in the alleged assault or that they had come at the said place simultaneously and were the members of the alleged unlawful assembly. On the contrary, we find that he has only stated that when Ratnakar Patil was trying to say something to Chandrakant Jadhav one rickshaw came there and one person got down from the said rickshaw and gave blow with stick on Chandrakant Jadhav's head and Chandrakant Jadhav fell down. He has further stated that when he tried to catch the said person, a blow with stick was also given on his shoulder. At that time, accused Ratnakar asked the other persons to catch

him. So, he ran away from the said place and went towards booking office of Railway Station. At that time, accused No.3 Ratnakar Patil and accused No.4 Hemant Patil chased him. Thus, it is very clear that witness Ashok Sankhe has at the most named and identified accused No.3 Ratnakar and accused No.4 Hemant Patil. So, his evidence is certainly of no use to prove that at the relevant time there was an unlawful assembly and the accused persons were the members of the said assembly. Incidently, it must be noted that though the complainant has stated that at the relevant time, he also received the stick blow on his shoulder, admittedly, there is no medical evidence to corroborate this version. No satisfactory explanation is also given as to why he did not go to the doctor. So, under such circumstances, it is really difficult to believe that the complainant had in fact sustained any stick blow as stated by him.

15. According to the prosecution, complainant's friend PW-5 Suresh Sahani Exh-27 was present at the place of offence at the relevant time and he is an eye witness to the incident. He has stated that when Chandrakant Jadhav and Ratnakar were standing at the place of offence one rickshaw came there and four

persons got down from the said rickshaw and the accused Hemant Patil gave a blow with stick to Chandrakant Jadhav from his back side. He in fact saw three blows being given to Chandrakant Jadhav by accused Hemant Patil. As a result of the said blows, Chandrakant Jadhav fell on the ground and then he was assaulted by Ratnakar Patil with stick. According to him accused Kishor Churi i.e. accused No.5 also gave blow with stick to him and as such he and Ashok ran away from the said place. Even if we take his evidence as it is. There is nothing in his evidence which would indicate that at the relevant time 5 or more persons had taken part in the alleged incident. He has in fact named only 3 accused persons i.e. Ratnakar Patil, Hemant Patil and Kishor Churi (Accused Nos. 4,5 and 6). So, his evidence is also of no use to prove that there was an unlawful assembly and the accused persons were the members of the said assembly. The learned Advocate for the accused vehemently argued before us that his evidence can not be accepted even for holding that accused Nos. 3,4 and 5 assaulted Chandrakant Jadhav because there are several contradictions and improvements. It is pertinent to note that PW-5 Suresh Sahani has stated :-

> “ I do not remember whether I had stated before Police that Hemant had stick and he

gave blow on the head of Chandrakant Jadhav from back side. I can not assign any reason why it is not mentioned in my statement. I had stated before Police that one person amongst four was carrying stick and gave blows on Chandrakant's head. I stated before Police that Ratnakar Patil assaulted Chandrakant by stick. I can not assign any reason why there is no mention of his name in my statement. I can not assign any reason why name of Kishor Churi is not mentioned in my statement."

So, from the abovementioned admissions of witness Sahani it is very clear that he had not at all stated about the material facts before police when his statement was recorded but has deposed about the alleged assault by particular accused for the first time while giving evidence from the witness box. So, his evidence is certainly not worthy of credence and the learned Trial Judge has rightly disbelieve the same.

16. The only important witness now left is injured Chandrakant Jadhav Exh-21. He has stated that when he

was standing on platform No.1 complainant Ashok Sankhe had come to him and expressed his apprehension about accused Ratnakar Patil and then he and Ashok Sankhe had gone to the place of offence. He has also stated that when he was talking with Ratnakar one rickshaw came there and accused No.1 Kiran Bhusane was driving the rickshaw and accused No.6 Mahendrakumar Pandit was standing aside. There is nothing in his evidence to show that these two accused persons were any way concerned with the alleged incident or had come to the said place with same intention or object which the other accused were having. We find that the said witness has further stated that the accused Mehboob, Hemant Patil and Kishor Churi i.e. Accused Nos.2,4 and 5 got down from rickshaw with stick like cricket stump, accused Hemant and Kishor assaulted him on his head from his back side. The accused Ratnakar thereafter took the stump from Hemant Patil and gave blow on his head and he became unconscious. It is pertinent to note that this statement of Chandrakant Jadhav is not fully corroborated even by the complainant. The complainant has stated that at the relevant time one person got down from rickshaw and he gave a blow with stick on the head of Chandrakant and he fell down. He has not at all stated that Chandrakant Jadhav was given several blows.

So, there is discrepancy with regard to the number of blows given to Chandrakant Jadhav by different accused persons. Besides this, even Chandrakant Jadhav has admitted in the cross examination that he had not named accused Mehmood in his statement before Police. Not only that but he has further stated in the cross examination that he had stated before Police that he was assaulted by accused Kishor but he can not assign any reason as to why it is not mentioned in his statement. Thus, it is very clear that though Chandrakant has tried to implicate the accused Mehmood and Kishor in the instant case, there is no cogent and convincing evidence to corroborate his version in that behalf. What is more to be noted is that if we see the medical certificate Exh-32 and the evidence of Dr. Pramod Patil Exh-31 then we find that Chandrakant had in fact received only one injury. If really he was assaulted with stick by several persons and received several blows on head there would have been more injuries and not only one injury on the head. So, from his evidence it only appears that at the relevant time he received only one blow with stick on his head and even according to his evidence the said blow was given first by Hemant Patil i.e. accused No.4. So, evidence of Chandrakant Jadhav is also of no use to the

prosecution to prove that at the relevant time there was an unlawful assembly and the accused persons were members of the said assembly.

17. The learned advocate for the accused Nos. 4 to 6 strenuously argued before us that there was considerable delay in recording the statement of injured Chandrakant and as such, this evidence should have been totally discarded by the learned Trial Judge. It must be noted that admittedly immediately after the time, he received blow with stick, he had fallen and became unconscious. It is also an admitted that thereafter, initially he was taken to Dr. Promod Patil's Hospital and then to J.J. Hospital. It has come in the evidence of Investigating Officer Police Inspector Uttam Ahire Exh-33 that he had deputed police constable at J.J. Hospital to record the statement of witness Chandrakant but as he was unconscious he could not record the same. It is very clear from the evidence that statement of this witness was recorded on 10/01/1986 so there is some delay but under the circumstances, it has to be said that this delay has been properly explained by the I.O. Merely because there is some delay in recording the statement, we can not hold that evidence of Chandrakant has to be

rejected in toto.

18. It must be noted that though it is the case of the prosecution that the common object of the alleged unlawful assembly was to commit murder of complainant Ashok Sankhe and/or Chandrakant Jadhav, we find that there is absolutely no evidence worth the name to prove the same. Merely because Chandrakant had sustained injury on his head and it was caused as a result of blow with stick, we can not jump to the conclusion that the said blow was given with an intention to commit murder. It must be noted that the prosecution has failed to adduce any evidence to show that the injury sustained by Chandrakant was grievous. The Prosecution has also not produced the weapon or stick like stump with which blow was given by accused Hemant on Chandrakant's head. So it is not even proved that weapon used can be called a dangerous weapon under the circumstances of the case. Though Chandrakant has stated that he was admitted in the hospital for 21 days, there is no medical certificate to that effect. In fact, admittedly, even on 10/01/1986, he was already discharged. So even if we calculate the period from 23/12/1985 to 10/01/1986 it can not be said that he was in the hospital for a period of 20 days as required by

section 320 of the IPC. There is nothing on record to indicate that Chandrakant had sustained any fracture. Doctor who has examined him i.e. PW-7 Dr. Pramod Patil Exh-31 has also not stated that injury sustained by Chandrakant was of serious nature and was sufficient in the ordinary course of nature to cause death if timely medical help would not have been received by him. Merely because after he had sustained injury, he had vomited thereby indicating that some injury was caused to the brain, we can not jump to the conclusion that it was grievous injury. If really Chandrakant had sustained serious grievous injury then certainly prosecution would have adduced evidence in that behalf. Merely because Chandrakant has stated that as a result of the said blow his right side is affected and he can not carry out his activities properly, such scanty and vague evidence is not sufficient to jump to the conclusion that the injury in question was a grievous injury.

19. It must also be noted that there is nothing on record to show that at the relevant time, the accused had knowledge that Chandrakant would be at the said place nor there is anything on record to indicate that Chandrakant received more than one blow. If really the

intention/common object would have been to commit murder of Chandrakant then certainly the accused would not have stopped only by giving one stick blow on the head. The learned Trial Judge has considered all these aspects of the case in its proper perspective and has rightly held that the prosecution has failed to prove that the accused persons have committed offences punishable under sections 147, 148, 307 r/w. 149, 307 r/w. 34 of IPC. There is nothing on record to show that the view taken by the learned Trial Judge is not correct or possible. In this view of the matter, we are not at all inclined to interfere with the order of acquittal passed by the learned Trial Judge.

Hence, the appeal is dismissed.

The order of acquittal of the accused for the offences punishable under sections 147, 148, 307 r/w. 149, 307 r/w. 34 of IPC is upheld.

The bail bonds of the accused stand cancelled.

(D.G. DESHPANDE,J.)

(S.R. SATHE,J.)